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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/822,079

04/12/2004

Allen Berger JR.

240061

2185

7590 06/24/2009  
Sanchelima and Associates, P.A.  
Jesus Sanchelima, Esq.  
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EXAMINER

JOHNSON, BLAIR M

ART UNIT

PAPER NUMBER

3634

MAIL DATE

DELIVERY MODE

06/24/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* ALLEN BERGER JR.

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Application No. 10/822,079  
Technology Center 3600

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Mailed: June 24, 2009

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Before PAMELA S. BENNETT, *Review Team Paralegal*.  
BENNETT, *Review Team Paralegal*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on June 22, 2009. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter requiring attention prior to docketing.

EXAMINER'S CONSIDERATION OF REPLY BRIEF

A Reply Brief was filed on May 1, 2009, in response to the Examiner's Answer mailed April 10, 2009.

Title 37, Code of Federal Regulations, §41.43 states:

(a)(1)... the primary examiner must acknowledge receipt and entry of the reply brief. In addition, the primary examiner may withdraw the final rejection and reopen prosecution or may furnish a supplemental examiner's answer responding to any new issue raised in the reply brief.

The Communication mailed June 17, 2009, was an improper acknowledgment of the Reply Brief, as it constitutes a Supplemental Examiner's Answer as per § 1208, part II., of the *Manual of Patent Examining Procedure* (MPEP) (Eighth Edition, Rev. 6, September 2007). A Supplemental Examiner's Answer requires a Director or designee's approval.

CONCLUSION

Accordingly, it is ORDERED that the application is returned to the Examiner:

- 1) to vacate the Communication mailed June 17, 2009;
- 2) to generate and mail either:
  - a) a revised Communication properly acknowledging to the Reply Brief dated May 1, 2009 in accordance with MPEP § 1208, part II.; OR

- b) issue a Supplemental Examiner's Answer with the required signature (Technology Center Director or designee)<sup>1</sup>, if appropriate; and
- 3) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

PSB

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<sup>1</sup> In Technology Center 3600, only the Director may authorize a Supplemental Examiner's Answer.